RSA 50/2001
BEFORE
HON'BLE MR JUSTICE B.P. KATAKEY
JUDGMENT & ORDER (Oral)

This appeal by the plaintiffs is directed against the judgment and decree dated 13th March, 2001 (decree drawn on 26th March, 2001), passed by the learned District Judge, Lakhimpur, North Lakhimpur in Title Appeal No.1/2000, setting aside the judgment and decree dated 15th December, 1999 passed by the Civil Judge (Senior Division), Lakhimpur, North Lakhimpur in Title Suit No.26/1993, whereby and whereunder the suit of the plaintiffs was initially decreed by the trial Court.

[2] The appellants as plaintiffs instituted the aforesaid suit against the present respondents as defendants praying for specific performance of the contract by directing the respondent No.1 to execute a sale deed in respect of the land measuring 2 Kathas, out of 3 Kathas 6 Lechas covered by Dag No.221 of Periodic Patta No.161 of Saokuchi Map village in Narayanpur Mouza, morefuly described in the schedule to the plaint, based on the contract of sale dated 28th October, 1991 (Exhibit-1) and also for perpetual injunction restraining the defendants, their agents, employees and servants etc. from entering into the suit land and causing any disturbance to the plaintiffs, their tenants, employees etc. in their peaceful possession of the suit land, contending inter alia that the defendant No.1 agreed to sale the suit land to the plaintiffs and after much negotiation the price was fixed at Rs.42,000/- @ Rs.21,000/- per Katha and the defendant No.1, who was in urgent need of money, on 28th October, 1991 after receiving the said amount of Rs.42,000/-, executed the deed being Exhibit-1 in presence of the witness and delivered possession of the land in presence of the witnesses as well as the land record staff of Narayanpur Circle and immediately thereafter, concrete cement pillars on the boundaries of the suit land were put and the citha mutation was granted, wherein the defendant No.1 put his signature in token of acceptance of such mutation. According to the plaintiffs, since the said deed was an unregistered instrument, a clause was put in the said deed to the effect that the defendant No.1 would subsequently execute a registered deed of sale conferring title on the plaintiffs, which, however, having not been done and instead the defendants having instituted the proceeding for cancellation of the mutation, the plaintiffs have to institute a suit for specific performance of the contract and injunction, as noticed above.

[3] The defendants on receipt of the summon entered appearance and filed their joint written statement denying the claim of the plaintiffs, contending that an amount of Rs.5,000/- only was paid by the plaintiffs and not Rs.42,000/-, as has been mentioned in Exhibit-1 deed. It has also been stated that taking advantage of the illiteracy and the closeness, the plaintiffs deceived the defendant No.1 and he was compelled to put his signature in the said deed, though an amount of Rs.5,000/- was only paid. It has also been pleaded that possession was never delivered to the plaintiffs as, contended, on execution of the said deed (Exhibit-1). The further pleaded case of the defendants is that the plaintiffs never paid the remaining amount of Rs.37,000/- and hence, there is no question of executing the registered instrument in favour of the plaintiffs by defendant No.1. It has further been pleaded that as the mutation was allowed by deceiving the defendant No.1, he filed a proceeding before the District Collector for cancellation of the said mutation, which was accordingly cancelled, against which an appeal was also preferred before the Board of Revenue, which has been dismissed. The defendants have also field counter claim praying for declaration of right, title and interest and recovery of khas possession by evicting the plaintiffs therefrom contending that the plaintiffs have subsequently entered into the suit land by dispossessing the defendants therefrom. The plaintiffs filed their written statement against the counter claim contending that since the defendant No.1 has executed a contract for sale vide Exhibit-1 deed and the plaintiffs w

ere put into possession on receiving the entire consideration amount of Rs.42,000/-, the plaintiffs are entitled to a decree for specific performance of the contract and hence, the defendants are not entitled to the decree declaring right, title and interest and recovery of khas possession.

[4] The trial Court on the basis of the pleadings of the parties framed the following issues for determination:-

1. Whether there is any cause of action for the suit?

2. Whether the suit is maintainable in this presence form and manner without claiming declaration of title of the plaintiffs in respect of the suit land?

3. Whether defendant No.1 proposed to sell the suit land at Rs.42,000/- and entered into on agreement on 28-10-91 with plaintiff No.1 and 2 and pursuant to the said agreement, defendant No.1 received full price of the land and delivered possession to the plaintiff No.1 and 2 as alleged in the plaint?

4. Whether the plaintiff No.1 and 2 paid only Rs.5,000/- as part payment of the price of the suit land proposed to be sold to the plaintiff No.1 and 2 by the defendant No.1 and promised to pay the remaining price as alleged in the W/S of the defendant?

5. Whether possession of the suit land having been delivered to the plaintiff No.1 and 2 pursuant to the agreement dtd. 28-10-91 both the plaintiffs are possessing the suit land till now?

6. Whether the plaintiffs are entitled to get specific performance of contract dtd. 28-10-91 for getting registered sale deed in respect of the suit land by the defendant No.1 in favour of the plaintiff No.1 and 2 pursuant to the agreement dtd. 28-10-91?

7. Whether there is cause of action for the counter claim of the plaintiffs and said counter claim can be decreed as claimed by the defendant

8. To what relief, the parties are entitled?

[5] The plaintiffs/appellants in order to prove their case, examined 4(four) witnesses and proved 11(eleven) documents, which are marked as Exhibits-1 to 11. The defendants have also examined 2(two) witnesses and proved 6(six) documents, which are marked as Exhibits-Ka to Cha.

[6] The trial Court upon appreciation of the evidences on record has decreed the suit of the plaintiffs by holding that since the defendant No.1 has executed the deed dated 28th October, 1991 (Exhibit-1), which, according to the trial Court, is an agreement for sale, on receiving the entire consideration amount and consequently handed over the possession to the plaintiffs, they are entitled to a decree for specific performance of the contract. The trial Court consequently dismissed the counter claim of the defendants.

[7] Being aggrieved, the defendants preferred Title Appeal No.1/2000 in the Court of the learned District Judge, Lakhimpur, North Lakhimpur, which has been allowed by judgment and decree dated 13th March, 2001. Hence the present appeal.

[8] The appeal was admitted for hearing vide order dated 28th June, 2001 on the following substantial question of law:-

Whether the appellate Court committed an error on the substantial question of law in arriving at a finding, which is not on the basis of the evidence on the re

cord?

[9] I have heard Mr. BN Sarma, learned counsel for the appellants/plaintiffs and Ms. B Devi, learned counsel appearing for the respondents/defendants.

[10] Mr. Sarma, learned counsel for the appellants at the outset has submitted that the substantial question has been wrongly formulated, in as much as the same ought to have been - whether the first appellate Court, being the final Court on facts, was justified in reversing the judgment and decree passed by the trial Court, without discussing the entire evidences on record, as required under Order 41 Rule 31 CPC?

[11] Ms. Devi, learned counsel appearing for the respondents also submits that the substantial question of law, which ought to have been formulated is relating to compliance of Order 41 Rule 31 CPC. Hence, this Court has reformulated the substantial question of law in the following manner and heard the learned counsel:

Whether the first appellate Court, being the final Court on facts, was justified in reversing the judgment and decree passed by the trial Court, without discussing the entire evidences on record, as required under Order 41 Rule 31 CPC?

[12] Mr. Sarma, learned counsel for the appellants referring to the provisions of Order 41 Rule 31 CPC submits that the first appellate Court while deciding the appeal is required to formulate the points for determination and to decide the appeal on the basis of the issues framed after discussing all the evidences on record, the same being the final Court on facts, more so, when the first appellate Court reverse the decree passed by the trial Court. Referring to the judgment and decree passed by the first appellate Court, Mr. Sarma, learned counsel for the appellants submits that the first appellate Court, while reversing the judgment and decree, did not discuss the entire evidences on record, though required to do so, when he has reversed the judgment and decree passed by the trial Court. It has been submitted that the first appellate Court has recorded the finding that Exhibit-1 sale deed has been manipulated by the plaintiffs without discussing any evidence and despite there being no evidence in that regard. It has also been submitted that the first appellate Court has also not taken into consideration as to whether Exhibit-1 deed can be used for other collateral performance, namely, for specific performance of the contract, though it is shown to be a deed of sale and not registered and is compulsorily registerable. The learned counsel submits that since the Exhibit-1 deed was not registered, the same can be used for other collateral performance, namely, to demonstrate that there was a contract between the parties for sale, which aspect of the matter, according to the learned counsel, has not been taken into consideration at all by the first appellate Court. It has also been submitted that the finding relating to handing over of possession has also been recorded by the first appellate Court against the plaintiffs without discussing the evidences on record, apart from recording the finding that the land is an ejmali land held by other co-sharers, apart from the defendant No.1. Mr. Sarma, learned counsel, therefore, submits that the appeal may be remitted to the first appellate Court for deciding the first appeal afresh on the basis of the evidence on record.

[13] Ms. Devi, learned counsel appearing for the respondents, on the other hand, has submitted that it is apparent from the judgment and decree passed by the first appellate Court that the land in question is ejmali land held by more than 1(one) co-sharers, which includes the defendant No1, and hence, even if there was a contract for sale, no decree for specific performance of the contract can be passed by the Court in the absence of any partition amongst the co-sharers.

[14] The learned counsel further submits that it is apparent from the

judgment passed by the first appellate Court that the clause relating to assurance for executing the sale deed later, was inserted subsequently by the plaintiffs. The learned counsel, therefore, submits that no illegality has been committed by the first appellate Court in allowing the appeal by setting aside the judgment and decree passed by the trial Court.

[15] I have considered the submissions advanced by the learned counsel appearing for the parties and also perused the judgments and decrees passed by both the Courts below.

[16] It appears from the judgment and decree passed by the first appellate Court that a finding has been recorded to the effect that a clause relating to the assurance for execution of a sale deed by the defendant No.1 later on, was subsequently added to Exhibit-1 sale deed, without discussing the evidence on record at all. The first appellate Court also came to a finding that the land being the ejmali land held by the defendant No.1 and others, the defendant No.1 cannot enter into a contract for sale over a specified area in the absence of any partition. Such finding has also been recorded without discussing any evidence. The first appellate Court also did not consider as to whether Exhibit-1 deed can be used for collateral purpose, though it does not confer any right, title and interest on the plaintiffs, the said deed being admittedly not a registered instrument.

[17] The first appellate Court being the final Court on facts is required to discuss all the evidences on record issue-wise and by formulating the points for determination, more so, when it is a judgment of reversal. As noticed above, the first appellate Court has reversed the finding recorded by the trial Court and set aside the decree passed without discussing the evidences on record at all, though required to do so.

[18] In view of the above, the judgment and decree passed by the first appellate Court is set aside. The appeal is remitted to the first appellate Court for deciding the first appeal afresh, on the basis of the evidence already on record as adduced by the parties. The appeal shall be decided within a period of 2(two) months from the date of appearance of the parties, as fixed by this Court.

[19] The parties are directed to appear before the first appellate Court, namely, the Court of the learned District Judge, Lakhimpur, North Lakhimpur on 17th June, 2013.

[20] The Registry is directed to send down the records forthwith, so as to reach the first appellate Court on or before 3rd June, 2013.